

Fw: Changes to DEP rules on LSRP

Paul Simon

to:

Len Romino

05/26/2010 04:18 PM

Cc:

Mugdan.Walter, Finazzo.Barbara, Schaaf.Eric, irene.kropp

Bcc:

William Sawyer

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Len –

Walter Mugdan and Barbara Finazzo are on travel and asked that I get back to you about the draft changes to Section 7:26C-2.4 of your rules. Here are our comments:

1. Paragraph (a)3.i.(2) of the draft provides that any person who initiates remediation on or after November 4, 2009 shall conduct the remediation of the discharge without prior Department approval, except if "[t]he remediation is being conducted pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901." At a state-lead RCRA site, the responsible party may be conducting the work pursuant to an order or other requirement issued or established under New Jersey state law rather than pursuant to RCRA, and so the language quoted above appears to be too narrow. We recommend it be changed to, "The remediation is being conducted partially or solely to satisfy obligations under the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, *et seq.*" And to be consistent, we recommend that paragraph (a)1.i. likewise be changed to say, "The remediation is being conducted partially or solely to satisfy obligations under the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, *et seq.*, and the U.S. Environmental Protection Agency is the lead agency for the remediation."
2. Irene Kropp stated in her 2/23/10 letter to Barbara and Walter that in the changes to the regulations, DEP will clarify that CERCLA and RCRA cases must continue to implement the federal method for public participation. Has this concept been included in the draft changes to the rules?
3. Section 21.e. of the NJ Site Remediation Reform Act, N.J.S.A. 58:10C-21.e., says, "Unless directed otherwise by the department, the person responsible for conducting the remediation and the licensed site remediation professional may continue to conduct the remediation while the department conducts any inspection or additional review of documents pursuant to this section" (emphasis added). We recommend that the Administrative Requirements for the Remediation of Contaminated Sites be consistent with that statutory provision. Specifically, we recommend that in parag. (a)3.i. of §7:26C-2.4, a new subparagraph (4) is added saying, "The Department is conducting an inspection or additional review of documents submitted for the remediation of a contaminated site and the Department has directed the person not to conduct the remediation while the Department conducts such inspection or review." And the word "or" would need to be moved from the end of subparagraph. (2) to the end of subparagraph. (3).
4. In parag. (a)1.ii. and (a)3.i.(3), please refer to the "National Priorities List" (not National Priority List), and the correct title and citation for CERCLA is the "Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, *et seq.*"

Thanks very much for considering our comments. If you have any questions or would like to discuss our comments, please let me know.

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----- Forwarded by Walter Mugdan/R2/USEPA/US on 05/20/2010 02:22 PM -----

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Date: 05/20/2010 01:22 PM
Subject: Changes to DEP rules on LSRP

Walter/Barbara

As we discussed recently, I have attached draft changes to our rules regarding how RCRA and Superfund sites will be handled under the LSRP program. The changes are highlighted. These changes are part of a larger rule proposal that go out in late summer. Please let me know if you have any comments or questions.

Len

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